



FH  
FCP-173269

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP- 173269

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**PRELIMINARY RECITALS**

On March 30, 2016, the above petitioner filed a hearing request under Wis. Admin. Code § HA 3.03, to challenge a decision by the Department's agent, iCare HMO, regarding a Medical Assistance-related program. The hearing was held on May 25, 2016, by telephone. A hearing set for April 28, 2016, was rescheduled at the petitioner's request.

The issue for determination is whether iCare correctly denied the petitioner's request for additional Supportive Home Care (SHC) hours for meal preparation and grocery shopping.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
iCare HMO,  
1555 N. Rivercenter Drive  
Suite 206  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Nancy Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. The petitioner is a participant in the Family Care Partnership Program (FCP), a Medicaid sub-program. As such, she receives services through the Wisconsin Medicaid program's agent, the iCare HMO. The FCP integrates Medicaid and Medicare covered services with long-term care services for persons at risk of needing nursing home care.
3. The petitioner enrolled in iCare's FCP effective February 1, 2010. Her iCare team assesses her quarterly, and develops a service plan (Plan) at least annually. Her most recent Plan took effect February 1, 2016, and listed goals of living independently in her home, minimizing stress, having the best possible health, obtaining preventative care, and monitoring chronic conditions. *See*, Exhibit A-1.
4. In a January 12, 2016, contact, the petitioner requested more home meal preparation help. On January 21, her team assessed her regarding this request. At that time, the petitioner was receiving 8.5 SHC hours weekly, including one hour weekly for help with grocery shopping and 160 minutes (4 x 40 minutes) weekly for meal preparation help. The other SHC hours were assigned for help with bathing, dressing, housekeeping, and laundry. Additionally, the petitioner received a home delivered meal five times weekly. At the assessment's conclusion, the team advised that it would approve an additional two hours monthly for grocery shopping help, but would leave the other time allocations the same.
5. The petitioner, age 59, is physically disabled and lives alone in the community. She has diagnoses of hepatitis C, chronic liver failure, hypertension, edema, supra ventricular tachycardia, PTSD, fecal incontinence, hemorrhagic CVA (November 2012) which led to ptosis and decreased vision in the right eye, right side weakness, chronic fatigue syndrome, arteriovenous hemangioma, diverticulosis, iron deficiency anemia, GERD, cirrhosis with portal hypertension/hypertensive gastropathy, and hepatic encephalopathy. This articulate petitioner is able to verbalize her needs, use a telephone, manage money, and independently perform some ADLs – tooth-brushing, washing face and hands, combing hair, lower body dressing, eating, toileting, and transfers. She ambulates with a cane or wheeled walker. *See*, Exhibit A-1. At five feet, eight inches tall, she weighs 221 pounds. *See*, Exhibit A-4, B-5.
6. On February 15, 2016, iCare issued a Notice of Decision to the petitioner, advising that it was not approving all of the increased SHC hours requested by the petitioner in January 2016. The petitioner appealed.
7. The HMO declined to increase cooking minutes because it believes that the petitioner is capable of fixing simple meals (breakfast, lunch) independently. However, the petitioner's visual confusion secondary to her stroke creates a hazard when she attempts to cut up or heat food. Thus, cooking help is needed for even simple meal preparation if heating or cutting is involved.
8. In addition to the 160 weekly minutes of approved SHC time for cooking help, the petitioner currently seeks an additional 60 minutes for cooking help (for a total of 220 minutes). She proffered a multi-week sample meal plan, showing requested cooking times. Due to receiving Meals on Wheels for five lunches, only 10 minutes weekly was requested for lunch preparation; that is certainly reasonable. Dinner preparation times averaged 155 minutes weekly. That figure was also reasonable, and appears in line with the 160 minutes already approved by iCare. The petitioner's suggested breakfast preparation times averaged 55 minutes. This figure was unreasonable, as it included extra time for an unhealthy breakfast of pancakes and sausages. The petitioner argued that more meal preparation time was needed, in part, due to the need to fix

healthier foods. Pancakes and sausages are not healthy foods. Thirty-five minutes weekly is an adequate, cost-effective amount of time for preparation of a healthy breakfast. Total reasonable SHC cooking time is 200 minutes (10 + 155 + 35).

9. The HMO increased the petitioner's grocery shopping time from four to six hours monthly. It declined to increase the shopping time to the requested eight hours monthly. The petitioner requires six hours and 45 minutes of monthly grocery shopping time as a cost-effective way to adequately meet the petitioner's grocery procurement needs.

### **DISCUSSION**

The FCP program is supervised by the Wisconsin Department of Health Services, and is designed to provide appropriate long-term care services for elderly or disabled adults. The closely related Family Care program is authorized at Wis. Stat. § 46.286, and is further described at Wis. Admin. Code, ch. DHS 10. FCP does not have its own code chapter. *See also*, 42 USC § 1315; 42 USC §§ 1396n(a) & (b); Wis. Stat. §49.45(32); *Medical Assistance Eligibility Handbook (Handbook)*, §§ 28.1 *et seq.*, online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

The HMO/CMO must develop a Plan in partnership with the client. Wis. Admin. Code § DHS 10.44(2)(f). The Plan must reasonably address all of the client's long-term needs to assist the client to be as autonomous as possible, while also being cost effective. While the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. *Id.*, 10.44(1)(f). Plans must be reviewed periodically. *Id.*, 10.44(j)(5). In a fair hearing to review the adequacy of the Plan, the burden of proof rests with the petitioner who is seeking a change to a greater level of service; that burden is the preponderance of the credible evidence.

The state code language on the scope of permissible services for the FC includes supportive home care:

#### **DHS 10.41 Family care services. ...**

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., ... . In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

**Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; ... personal care services; ... supportive home care; ... and community support program services.**

Wis. Admin. Code §DHS 10.41(2) (June, 2009). The Department's CMO contract is found at *Family Care and Family Care Partnership Program Contract between the Wisconsin Department of Health Services Division of Long-Term Care and the MCO* (2016) (*Contract*), available online at <https://www.dhs.wisconsin.gov/familycare/mcos/cy2016mcocontract.pdf> . Having established that SHC hours can be a covered service, the question that remains is, how many SHC hours are essential to meeting the petitioner's needs?

The skeletal legal guidance that pertains to determining the type and quantity of daily care services that must be placed in a Plan is as follows:

**HFS 10.44 Standards for performance by CMOs.**

...

**(2) CASE MANAGEMENT STANDARDS.** The CMO shall provide case management services that meet all of the following standards:

...

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, ... The service plan shall meet all of the following conditions:

1. *Reasonably and effectively addresses all of the long-term care needs* and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.
2. *Reasonably and effectively addresses all of the enrollee's long-term care outcomes* identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. *Is cost-effective compared to alternative services* or supports that could meet the same needs and achieve similar outcomes.

...

*(emphasis added)*

Wis. Admin. Code §DHS 10.44(2)(f). The petitioner disagrees with the HMO's proffered service plan because of allegedly insufficient supportive home care time for meal preparation and grocery shopping. She asserts that the proffered time does not address her care needs (safety during meal preparation, obtaining healthy food).

The HMO declined to increase cooking minutes because it believes that the petitioner is capable of fixing simple meals (breakfast, lunch) independently. However, the petitioner's visual confusion/double vision secondary to her stroke creates a hazard when she attempts to cut up or heat food. Thus, cooking help is needed for even simple meal preparation if heating or cutting is involved. This means that the petitioner needs more than the 160 minutes currently assigned to this task. *See*, Exhibits B-7, B-8.

In addition to the 160 weekly minutes of approved SHC time for cooking help, the petitioner currently seeks an additional 60 minutes for cooking help (for a total of 220 minutes). She proffered a multi-week sample meal plan, showing requested cooking times. Due to receiving Meals on Wheels for five lunches, only 10 minutes weekly was requested for lunch preparation; that is certainly reasonable. Dinner preparation times averaged 155 minutes weekly. That figure was also reasonable, and appears in line with the 160 minutes already approved by iCare. The petitioner's suggested breakfast preparation times averaged 55 minutes. This figure was unreasonable, as it included extra time for an unhealthy breakfast of pancakes and sausages. The petitioner argued that more meal preparation time was needed, in part, due to the need to fix healthier foods. Pancakes and sausages are not healthy foods. Thirty-five minutes weekly is an adequate, cost-effective amount of time for preparation of a healthy breakfast. Total reasonable SHC cooking time is 200 minutes (10 + 155 + 35).

The petitioner also requested an increase in shopping time from four hours to eight hours monthly. The HMO increased the petitioner's grocery shopping time to six hours monthly. The HMO was nearly

correct in its determination that six hours of monthly grocery shopping time was the cost-effective way to adequately meet the petitioner's grocery procurement needs.

Although her explanation of the need for more shopping time was not entirely linear, it appears that the petitioner and her worker go to a food pantry once monthly. That excursion takes two hours, 30 minutes, with the petitioner having little control over the pantry's process and the amount of time involved. She also reported making one major grocery shopping trip monthly, and two minor monthly trips, at one hour each. Thus, the pantry trip and two minor trips require help totaling four hours, 30 minutes.

For the major trip, the petitioner testified to needing 40 minutes for the round-trip travel time, which is plausible. She further testified to needing one hour for the shopping, and 20-30 minutes for help putting groceries away at home. This is probably not plausible, and certainly not a cost-effective use of funds. Obviously, it does not take an SHC worker 60 minutes to select and purchase groceries for *one person*. In this Judge's personal experience, forty-five minutes is enough time to buy groceries for one or two persons. The petitioner justified the extra in-store time by saying that, due to impaired vision, she needs extra time for reading package labels for calorie and salt content information. This is not an adequate justification for extra time; *i.e.*, it is not cost-effective. The petitioner's care worker wrote a letter for an exhibit herein, so the worker is not illiterate. The worker can efficiently read the package labels. The petitioner's Plan outcomes of living independently in her home, lowering stress, and being in the best possible health, are just as easily achieved by having the SHC worker read the labels rather than the petitioner. Reading package labels "independently" is not among the petitioner's Plan outcomes. Thus, there is no reasonable justification for assigning more than 45 minutes for in-store grocery time. It is plausible that the petitioner, who uses a walker, needs time for her worker to unload groceries from a vehicle into the petitioner's kitchen. With no standardized guidance to refer to, this Judge relies upon her personal experience of requiring 10 minutes to get groceries out of a vehicle and into a kitchen.

The tally for the monthly grocery shopping time starts with the four hours, 30 minutes referenced above for the food pantry plus two smaller grocery store trips. To this, there should be added 80 minutes round-trip travel, 45 minutes in-store time, and 10 minutes unloading time, for a subtotal of 135 minutes (2.25 hours). The final total for reasonable grocery shopping is 6.75 hours, which is 45 minutes more than the HMO allocated.

### **CONCLUSIONS OF LAW**

1. To meet the petitioner's credible care needs, the petitioner reasonably requires 200 minutes weekly of SHC service time from the FCP program for the task of meal preparation.
2. To meet the petitioner's credible care needs, the petitioner reasonably requires 6.75 hours monthly of SHC service time from the FCP program for the task of grocery shopping.

**THEREFORE, it is**

### **ORDERED**

That the petition herein be remanded to the HMO with instructions to increase the petitioner's SHC time (1) for meal preparation from 160 minutes to 200 minutes weekly, and (2) for grocery shopping from 6.0 to 6.75 hours monthly, in the petitioner's current Plan that took effect February 1, 2016. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition is dismissed.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

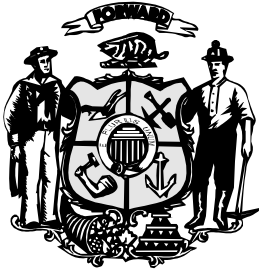
## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 14th day of July, 2016

\s \_\_\_\_\_  
Nancy Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 14, 2016.

iCare  
Office of Family Care Expansion  
Health Care Access and Accountability  
[REDACTED]